

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTHONY DeFRANCO,)	
)	
Plaintiff,)	
)	Civil Action No. 04-230-ERIE
V.)	
)	Judge Maurice B. Cohill, Jr.
SUPERINTENDENT WILLIAM WOLF;)	Mag. Judge Susan P. Baxter
STEVE REILLY; DENESE BRUNNER;)	
MANAGER ROD SHOWERS; CASE)	
MANAGER JUDY JACKSON;)	
DR. JOHN DOE; JANE DOE;)	
JEFFREY BEARD; ASSIST. SUPER.)	
WILLIAM BARR; MARILYN)	
BROOKS,)	
Defendants.)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS

AND NOW, come the defendants, Superintendent William Wolfe, Steve Reilly, Denese Brunner, Manager Rod Showers, Case Mgr.—GECAC Judy Jackson, Jeffrey Beard, Assist. Super. William Barr, and Marilyn Brooks (incorrectly identified as “Mariland”) by their attorneys, Thomas W. Corbett, Jr., Attorney General, Mary Lynch Friedline, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and submit the following Response to Plaintiff’s Motion for Sanctions (Doc. #232):

1. In his latest Motion for Sanctions, Plaintiff accuses Secretary Beard of committing perjury, claiming that he gave inconsistent answers in plaintiff’s Third set of interrogatories (Motion for Sanctions, ¶ 5-7.) Plaintiff is absolutely wrong.

2. Plaintiff has long sought production of DOC **criteria** and procedures concerning Z-Code and double ceiling. He requested this highly confidential information in his first Request for Production back in February of 2006 (Request #6, seeking “A copy of the DOC criteria for Z-Code Status”). (See defendants’ response to Plaintiff’s First Request for Production, Exh. A

hereto.) Defendants objected, and this Court has denied plaintiff access to that confidential information, most recently in the conference on August 24, 2006. The issue raised by plaintiff and ruled upon by this Court during that conference unquestionably concerned **the internal criteria for Z-Code status** found in the DOC procedures manual.

3. In his third set of interrogatories to Beard, plaintiff erroneously states in question 1 that he has been denied all access to the single cell **policy** and asks if the policy is accessible to inmates. (Exh. B to plaintiff's Motion.) The fact is, plaintiff has never requested, let alone been denied access to, publicly-accessible "policies." Indeed, he has attached to his motion the Z-code policy which is public and obviously available to inmates, including DeFranco. Had he asked for the policy, there would have been no basis for refusing it.

Defendant Beard and this office reasonably understood plaintiff's questions in his third set of interrogatories as seeking, once again, access to the confidential criteria and internal **policies** contained in the DOC procedures manual. Plaintiff can call it a policy or whatever he desires, but this office understood plaintiff's questions to be referring to the very same information (the confidential criteria) that plaintiff has been seeking and arguing about before this Court for the past six months.

4. It is plaintiff who is being misleading by stating in his interrogatories that he has requested and been denied access to publicly-available policies. The only information which he requested and to which he was denied access was the internal criteria. Thus, defendant Beard answered accordingly.

5. The remainder of plaintiff's third set of interrogatories sought responses to specific hypotheticals for Z-code status. Defendant Beard properly responded that he does not make such decisions and referred plaintiff to defendants' Motion for Summary Judgment and

supporting exhibits which discuss in detail the various issues that are considered in the Z-Code staffing process.

WHEREFORE, defendants submit that plaintiff's latest Motion for Sanctions is without merit and should be denied.

Respectfully submitted:

Thomas W. Corbett, Jr.
Attorney General

By: /s/ Mary Lynch Friedline
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Date: October 19, 2006

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2006, I electronically filed the foregoing *Response to Motion for Sanctions* with the Clerk of Court using the CM/ECF system. This document will be mailed via U.S. mail to the following non CM/ECF participants:

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